IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.10.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.40576 OF 2002

M/s Vaidiyalingam
Rice Mill rep. by
Thiru Vaidiyalingam ...Petitioner

Vs.

1. The Branch Manager,
Kancheepuram Central Cooperative Bank,
Kundrathur Branch,
Kancheepuram District.

2. The Special officer,
Kancheepuram Central Co-operative Bank,
15 G, Shiekpet North Street,
Kancheepuram 631 501. ..Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus as stated within

For Petitioner : Mr.V.Lakshminarayanan
For Respondent No.2 : Mr.M.S.Palanisamy
For Respondent No.1 : Mrs.G.Thilagavathi

O R D E R

Seeking to issue a writ of Certiorarified Mandamus to quash the proceedings of the second respondent made in Na.Ka.No. 468/2002-03/VA3 dated 18.9.2002, the above writ petition has been brought forth before this Court.

2. The affidavit filed in support of the petition is perused.

3. The Court heard the learned counsel on either side.

4. The case of the petitioner in short is that the petitioner sought for a loan of Rs.5.13 lakhs agreeing to repay the same within a period of 7 years from the date of its grant. It was also agreed that the

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interest payable on the said loan is at 15% p.a., Though the loan was sanctioned in August, 1994, after the legal notice issued on 24.11.1995, the first part of the loan was paid to him after a long delay. Pursuant to the loan transaction, a registered mortgage deed was executed by the petitioner on 11.8.1994 in favour of the first respondent. On 3.8.1995, just before the completion of one year of the execution of the mortgage, a letter was dispatched by the Head office calling upon the first respondent to pay a sum of Rs.40,000/-, but the said amount was not paid for a long time. Again, the petitioner issued a notice on 24.11.1995 calling upon the first respondent to disburse the loan amount within a period of 15 days from the date of receipt of the notice. Thereafter the loan was disbursed on 31.12.1995. The period to repay the loan amount expires only on 30.12.2002. The bank officials were pressing for repayment. The award also came to be passed by the Arbitrator in AR.C.No.8/2001 on 25.4.2001 for a sum of Rs.8,82,338/-. The award was not served upon the petitioner. While the matter stood thus, the first respondent had sent a notice on 20.5.2002 by registered post with acknowledgment due confirming that a sum of Rs.7,51,769/- if paid, the entire loan transaction would stand erased and the petitioner will be entitled to have the mortgage annulled and have the return of documents. Relying upon the Government Order 70 dated 28.3.2002 issued by the Government of Tamil Nadu that any loan pending on 31.3.1998 would be treated as NPA and the penal interest and interest would not be included in recovery and a flat rate of 12% interest would be recovered from the mortgagor. Accordingly, the petitioner made the first payment of Rs.1,83,669/- on 28.6.2002 and on 28.9.2002 he has paid a sum of Rs.5,68,100/- as demanded by the respondent. Thus, the entire amount as found in the notice viz. Rs.7,51,769/- was completely paid. While the matter stood thus, instead of returning the documents, the impugned notice was served by the second respondent on 18.9.2002 stating that the petitioner was not entitled to the benefits under the scheme and further demanded the repayment of the entire loan amount. Under such circumstances, the petitioner had no other option than to approach this Court for setting aside the same.

5. Advancing his argument on behalf of the petitioner, learned counsel would submit that a letter was issued to the petitioner by the first respondent, pursuant to G.O.70 dated 28.3.2002 as referred to above and it was also issued for the purpose of one time settlement, which would be applicable to all the Cooperative Societies and no discretion could be made, as could be seen from the G.O. itself. Under such circumstances, having made a sum of Rs.7,51,769/-, the entire loan transaction would be closed and having received the said amount as per the notice issued, the bank cannot now be permitted to come forward with a notice that the petitioner is not entitled to have the benefits under the scheme and he is liable to pay the rest of the payment as if the interest was not paid. Under such circumstances, the subsequent notice under challenge has no legal basis. Under such circumstances, it has got to be set aside.

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6. Learned counsel for the first respondent would submit that in the instant case originally an award was passed by the Arbitrator. A copy of which was also served upon the petitioner. Had the petitioner been really aggrieved, he should have challenged the said award, but he had not done so. Further, he has got a right of appeal under the relevant provisions of Cooperative Societies Act and hence once there is an efficacious and effective remedy available, he should not have invoked the writ jurisdiction. On that ground, the writ petition has got to be dismissed .

7. Learned counsel for the second respondent would submit that in the instant case, the petitioner relies upon the notice issued by the Branch Manager of the first respondent bank on 20.5.2002 and the first payment of Rs.1,83,669/- was made by him on 28.6.2002 i.e. 1/4 of the payment and this was actually placed by the Manager for approval before the District Central Cooperative Bank. But, it was not sanctioned and subsequently it was also rejected. It was however intimated that he is not entitled for the benefit under the scheme and hence he is liable to make the payment and after the first payment was made and before making the second payment on 28.9.2002, it was made clear that the petitioner was not entitled for the benefit under the scheme and thus after having knowledge of the fact that he was not entitled under the scheme, he has made the said payment. Further the Manager of the first respondent bank who sent the notice was not competent to do the same, and even without the approval he had done so. Under such circumstances, the notice that was issued by the Manager who was not competent to do so, cannot have the effect of the same. Hence, the writ petition has got to be dismissed.

8. The Court paid its anxious consideration on the rival submission made. After looking into the materials available on record, this Court is of the considered opinion that the writ petition requires very short order in the positive. It is not in controversy that the petitioner applied for loan and has also executed a mortgage deed with the first respondent bank. Though the sanction was not made, after legal notice issued through a lawyer, the sanctioned amount was disbursed. The time for payment as per the agreement between the parties came to an end in the month of December, 2002. Pending the same, an award came to be passed by the Arbitrator on 23.4.2001 and thus it would be quite clear that though the period for the entire payment came to an end in the month of December, 2002, the award came to be passed on 23.4.2001. The service or non-service of the award copy of the Arbitrator does not assume any importance. Now, it remains to be stated that it is not in controversy

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that the notice was served upon the petitioner by the Manager of the first respondent on 20.5.2002 calling upon him to make the payment of Rs.7,34,674/- and if paid on or before 30.6.2002, the entire loan transaction would be over and relying upon the notice issued by the Manager of the first respondent, the petitioner has paid 1/4th of the amount i.e. Rs.1,83,669/- on 28.6.2002 and the matter was placed for approval by the Manager along with the said payment before the District Cooperative Bank. A copy of which is placed in the hands of this Court, from which it is clear that it was issued pursuant to the G.O. for one time settlement. Thereafter, if the petitioner makes such a payment, the entire transaction would be over and on the strength of the notice and further the contents of the notice, the petitioner has acted so and he has also made 1/4th of payment accordingly. Now, it is contended on the side of the second respondent bank that the Manager of the bank was not at all competent to issue such a notice and hence the petitioner could not have the benefit under the said GO. A copy of the said G.O. has also been placed before this Court. The said G.O. does not make any discretion whether the Manager of the first respondent bank was competent to issue the notice or not and it is well within the administration of the Bank with which the petitioner was not at all concerned. Now the question that would arise is whether the bank can be allowed to go back after issuing such a notice through its Manager, who was acting on its behalf. It is contended by the second respondent that such a notice would not be binding on the petitioner and hence he has to make the rest of the payment towards interest which he is liable to pay. Attractive though the argument advanced by the learned counsel appearing for the second respondent bank, this Court is of the considered opinion that having paid Rs.7 lakhs in full quit and the first respondent having sent a notice stating that if the said amount is paid, the entire transaction would come to an end, the second respondent bank cannot be now permitted to say that a person who was serving as Manager of the first respondent Bank at that time, was not competent or empowered to issue such a notice. It is pertinent to point out that when the notice was issued by the first respondent on 20.5.2002 and originally an award was passed which was subsisting, whereby the petitioner was liable to pay the balance, no question of paying the balance amount would arise at this stage for the simple reason that once the notice for one time settlement pursuant to G.O. was issued by the Bank, to put an end to entire transaction by way of one time settlement, this Court is at a loss to understand how the said G.O. cannot be applied to the present petitioner. In the instant case, after sending such a letter through the Manager of the bank who was serving at that time, now, the second respondent bank is estopped from saying that the petitioner is not entitled to the benefit under the scheme. The petitioner had paid the entire amount as per the demand made in the notice dated 20.5.2002 .

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Hence, the notice issued by the second respondent which is now under challenge, has no legal consequence, and it has got to be set aside. The writ petition is ordered accordingly and the impugned notice is quashed. The first respondent Bank is also directed to return the document as expeditiously as possible, preferably within a period of eight weeks herefrom. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

VJY

To

1. The Branch Manager,
   Kancheepuram Central Cooperative Bank,
   Kundrathur Branch,
   Kancheepuram District.

2. The Special officer,
   Kancheepuram Central Co-operative Bank,
   15 G, Shiekpet North Street,
   Kancheepuram 635 501.

1 cc To Mr.S.Palaniswamy, Advocate, SR.61874.
1 cc To Mr.V.Raghavachari, Advocate, SR.61827.
1 cc To Mr.G.Thilagavathi, Advocate, SR.61874.

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